

PATRICIA C. ALKER

IBLA 81-1028

Decided September 23, 1982

Appeal from decision of the Montana State Office, Bureau of Land Management, dismissing protest against the validity of first-drawn simultaneous oil and gas lease application. M 49514.

Reversed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases:
Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases:
Applications: Filing

The Board will reverse a BLM decision denying a protest contending that the first drawn applicant for a noncompetitive oil and gas lease has not complied with 43 CFR 3102.2-6 (1980), requiring the disclosure of any agreement with the lease filing service which assisted the applicant, where the record establishes that the first drawn applicant did not comply.

APPEARANCES: R. Hugo C. Cotter, Esq., Albuquerque, New Mexico, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

This appeal is taken from a decision dated August 10, 1981, by the Montana State Office, Bureau of Land Management (BLM), dismissing appellant's protest against the validity of first drawn simultaneous oil and gas application M 49514.

The simultaneous oil and gas lease application of Harold Wright was drawn with first priority for parcel MT 13 on the November 1980 simultaneous list. Appellant's application for this parcel was drawn with second priority.

On July 6, 1981, appellant filed a protest asserting that Wright's application was improperly filed because it was not possible for appellant to verify the propriety of the agency agreement between Wright and his filing service, American Standard Oil and Gas Leasing Service, N.M., Inc. (American

Standard). Appellant further protested the fact that no file serial number had been assigned indicating whether BLM had received and accepted service agreements.

The decision appealed from states that American Standard had filed copies of two agency agreements on July 31, 1980, requesting that they be accepted and a serial number given. The decision explains that the agreements were not accepted and no serial number was assigned because BLM's policy is to accept only agreements in the name of the applicants and only if originally executed or certified copies are furnished. BLM dismissed the protest for the following two reasons: "1) A serial number reference could not be used because one had not been given; 2) regulation 43 CFR 3102.2-6(b) does not require that the blank agreements be filed each simultaneous filing period, only that they be filed in the proper [BLM] office."

Appellant contends in the statement of reasons that Wright's application is invalid because American Standard failed to file a required agency statement. She also contends that the agreements filed July 31, 1980, are invalid because they contain no time limit (less than 2 years) of authority.

[1] There are three ways in which to comply with the agency qualification regulations. 1/ There may be compliance with 43 CFR 3102.2-6(a), with 43 CFR 3102.2-6(b), or with 43 CFR 3102.2-1(c). BLM, in dismissing the protests, considered Wright to have complied with 43 CFR 3102.2-6(b). The record, however, reveals that Wright's filing did not comply with any one of the alternatives offered by the regulations for fulfilling the disclosure requirements.

The record facts in this case are that on July 31, 1980, American Standard filed copies of two sample agreements with the BLM Montana State Office. In the cover letter accompanying the sample agreements, American Standard stated:

Pursuant to new rules and regulations please find enclosed a sample of:

- (1) Our contract and separate agency statement agreement called form A/A.
- (2) Our contract containing an agency agreement called form A/C.

1/ On Feb. 26, 1982, the Department published interim final regulations which revised 43 CFR Subpart 3102 effectively eliminating the requirement to file the statement of agent qualifications found in 43 CFR 3102.2-6. See 47 FR 8544 (Feb. 26, 1982). In absence of countervailing public policy reasons or on intervening rights, this Board may apply an amended version of a regulation to a pending matter where it benefits the affected party to do so. See James E. Strong, 45 IBLA 386 (1980); Wilfred Plomis, 34 IBLA 222, 228 (1978); Henry Offe, 64 I.D. 53, 55-56 (1957). In this case, however, it is not possible to do so because of the intervening rights of the second and third priority applicants.

Any client filing with us has signed either the forms A/A or A/C. The above material is sent to you to be part of our permanent file.

We did not file clients in Montana during the July lottery. In the future a list of clients filing in Montana will be sent to you during the required time period.

This was apparently an attempt to comply with the reference regulation, 43 CFR 3102.2-1(c). However, there was never any acceptance of these documents by BLM. As indicated by that regulation, BLM acknowledges acceptance of such information by assigning a serial number. In this case there was never a serial number assigned, 2/ and in submitting Wright's application, American Standard used no reference number. 3/ Therefore, there could not be compliance with the agency disclosure requirements in this case pursuant to 43 CFR 3102.2-1(c).

We turn now to a consideration of compliance with 43 CFR 3102.2-6(a). That regulation requires that the applicant submit with the application a personally signed statement as to any understanding, or a personally signed copy of any written agreement. No personally signed statement accompanied Wright's application. There was no compliance with 43 CFR 3102.6-2(a).

43 CFR 3102.6-2(b) provides:

(b) Where a uniform agreement is entered into between several offerors or applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section. A list setting forth the name and address

2/ In a letter to Wright from the BLM Montana State Office dated Aug. 10, 1982, enclosing a copy of the dismissal of the protest, BLM stated:

"Your filing service, American Standard Oil & Gas Leasing Service, filed copies of two agency agreements on July 31, 1980, with the request that they be accepted and a reference number given. We do not assign reference numbers to blank agency agreements. Reference numbers are only given to applicants, not filing services, and only if originally executed or certified copies of agreements are furnished."

This was a misreading of the regulations by the State Office. As pointed out by the Board in Alvyn G. Novotny, 55 IBLA 196, issued on June 16, 1981, under 43 CFR 3102.2-1(c), filing services could file a copy of their general agreement and receive a serial number for further filings by reference.

Nevertheless, no serial number was assigned in this case.

3/ Wright's application was signed in the space "Applicant's Signature," "Harold P. Wright." The word "Client" was typed after the signature. In the space "Agent's Signature" the following appeared: "By: [typed] R J Broder [signature in ink] Agent [typed]." There was no serial reference number on the card. Nor did R. J. Broder indicate any affiliation with American Standard.

of each such offeror or applicant participating under the agreement shall be filed with the proper Bureau of Land Management office not later than 15 days from each filing of offers or applications if leasing is in accordance with subpart 3112 of this title. [Emphasis added.]

In Arthur H. Kuether, 65 IBLA 184, 188 (1982), we interpreted this regulation to require that "a copy of the uniform agreement must be submitted with the lease application; also a list of names and addresses of each applicant participating under the agreement must be submitted within 15 days of the filing of the application." (Emphasis in original.) The rationale for that was that 43 CFR 3102.2-6(a) required filing with the application, and 43 CFR 3102.2-6(b) represented merely an alternative method of providing the required documentation, not an alternative to the time for filing such documentation.

In this case on the last day of the simultaneous filing period, November 24, 1980, American Standard filed with BLM, inter alia, a list of clients, who had executed agency agreements, with addresses and a list of individuals authorized to sign for clients of American Standard. No copy of a uniform agreement was submitted by American Standard, as required by 43 CFR 3102.6-2(b).

We cannot find that there was compliance with any of the alternatives for filing agent qualifications. As the Board has stated, the provisions of 43 CFR 3102.6-2 must be strictly construed and failure of an oil and gas lease applicant or his agent to comply with those provisions must result in rejection of the application. Bernard S. Storper, 60 IBLA 67 (1981), appeal filed, Storper v. Watt, No. 82-0449 (D.D.C. Feb. 17, 1982). Accordingly, BLM should have rejected Wright's application and proceeded to adjudicate the second priority application submitted by the appellant.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed, and the case file remanded to BLM for appropriate action.

Gail M. Frazier
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

